

**MISSISSIPPI DEPARTMENT OF HUMAN SERVICES  
DIVISION OF FAMILY AND CHILDREN'S SERVICES**

**Cover Memorandum accompanying the April 27, 2007 filing of a Notice of Proposed Rule Adoption by the Division of Family and Children's Services proposing to issue revised Termination of Parental Rights policy for its policy manual.**

Listed below are the eight (8) amended rules to the agency's policy manual that account for the substantive differences between the former Termination of Parental Rights policy and practice and the current Termination of Parental Rights policy.

1. Proposed Rule:

Move Termination of Parental Rights practice to separate practice guide. Revise to have only Policy in MDHS Volume IV.

Current Rule:

Current policy and practice are combined in MDHS Volume IV.

2. Proposed Rule:

The agency may accept a voluntary surrender, regardless of the parent's age (Mississippi Code, Section 93-15-103(2)), unless that parent is *non compis mentis* and/or committed to a psychiatric hospital for the mentally ill or mentally retarded.

Current Rule:

Regardless of age, sign and execute a written voluntary release to relinquish parental rights to MDHS and terminate the relationship between parent and child.

3. Proposed Rule:

Parents have a six-month period of time to work with the County of Responsibility (COR) and complete an adult Individual Service Plan/Service Agreement for the benefit of the child. If the agreement is not satisfactorily completed within six months and there are no compelling reasons to extend the ISP/SA, the agency may initiate a referral for termination of parental rights.

Current Rule:

When the social worker has been actively involved in casework services to a family for one year or longer and there has been insufficient progress in the achievement of service task and outcomes, a careful evaluation by social worker and supervisor should be made concerning the continuation of services.

1. Guidelines for this decision should include:

- The family's willingness and capacity to be involved in service planning and the development of tasks and services.
- The individual tasks that have or have not been achieved, and what services have been provided.

Even if problems continue which concern F&CS staff and for which resolutions do not seem immediate, the primary consideration regarding termination versus continued intervention is whether or not the children remain in a harmful or imminently harmful situation.

If the children are not suffering harm or are not in imminent danger of harm, the termination process should be carried out with the family as clearly and as positively as possible, and the record should reflect detailed documentation validating this decision.

4. Proposed Rule:

None.

Current Rule:

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The Department may choose not to file for TPR if the child is older than 14 years and objects to being adopted.

5. Proposed Rule:

**E. Worker's Responsibilities**

1. The COR Worker will make diligent searches to locate the parents.
2. The COR Worker will discuss with the Supervisor the documented evidence and circumstances of the case, grounds for TPR, and obtain the Supervisor's approval to pursue TPR.
3. The COR Worker will initiate, through face-to-face contact, a discussion with the parents on voluntary surrender of parental rights, explaining thoroughly what TPR means for them and the child.
4. The COR Worker will inform the parents of the agency's decision to pursue TPR, citing the grounds, documented evidence, and circumstances of the case. This includes the COR Worker informing parent(s) that even if they are

visiting with the child(ren) and are in the process of complying with an ISP for the return of the child(ren), the agency is still pursuing TPR and intends to obtain a TPR Judgment.

5. The COR or COS Worker will discuss the plan of adoption with the child, gaining the child's input/reaction to the decision to file a petition to TPR and explaining what the process means for the child.
6. The Worker will document the Adoption Discussion with the child in the Child's ISP under the Initial/Review tab  in MACWIS.
7. The COR Worker will submit a TPR referral  through MACWIS and a TPR packet to the Supervisor who will submit it to the Regional Director. The RD then sends the electronic request and paper request to the Placement Unit at the State Office. The RD approves the TPR request  in MACWIS when the TPR packet is sent to the Placement Unit. The Placement Unit notifies the Attorney General's office that a TPR packet has been sent.
8. The COR Worker is responsible for reviewing the TPR petition for accuracy.
9. The COR Worker will sign the affidavit on diligent searches and return, within seven (7) days to the Attorney General's office.
10. The COR, and upon request the COS Worker, will be knowledgeable of the case being referred for TPR and be prepared to testify in the TPR proceeding.
11. After the hearing, the Worker will document results of the hearing in the child's case  in MACWIS.
12. The Worker will file a copy of the Judgment in the child's paper case and forward the document to the Placement Unit.

#### Current Rule:

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To be in compliance with Section 43-15-13 of the Mississippi Code of 1972, Annotated, county offices must assure that **social workers** are:

1. Conducting diligent searches for both **birth parents and relatives** during the **first two months** of the child's entry into the foster care system.
2. Documenting in the case record, the method(s) being used to conduct the diligent searches.
3. Developing and implementing the ISP\Service Agreement with the parents **within two months** of the child coming into foster care.
4. Informing parents they have **6 months** to successfully complete the Individual Service Plan (ISP) for parents.
5. Filing the child and parent's ISP with the court every **6 months** and to either terminate parental rights or request that the court extend the time period.
6. Alerting Foster Care Reviewers through MACWIS that a child has entered foster care. Refer to the appropriate screen.



6. Proposed Rule:

Section 43-15-13(3) of the Mississippi Code states the agency “shall make all possible contact with the child's natural parent(s) and any interested relative for the first two (2) months following the child's entry into the foster care system.” Possible sources for diligent searches include, but are not limited to:

1. Sending correspondence to all previous addresses;
2. Calling all previous telephone numbers posted in case file;
3. Sending letters to General Delivery in a town or city where the Worker believes the parent to be residing but has no specific address;
4. Contacting motor vehicle registration;
5. Requesting a record check from local law enforcement;
6. Writing the State Department of Labor (local Employment Office), if Worker has a social security number;
7. Contacting prisons and/or state hospitals;
8. Contacting all known relatives, friends and previous employers;
9. Checking the telephone directory, county, and city directories;
10. Contacting utility and telephone companies;
11. Accessing the state and Federal Parent Locator Service through the Child Support Enforcement Office;
12. Accessing the Location Services through contact with the local post office;
13. Making a historical check through MACWIS;
14. Utilizing Internet services.

Current Rule:

Possible sources of information for diligent searches include but are not limited to:

- Sending correspondence to all previous addresses.
- Calling all previous telephone numbers posted in case file.
- Sending letters to ‘General Delivery’ if you think a parent is in another city but have no specific address.
- Contacting motor vehicle registration.
- Requesting a record check from various police sources.
- Writing or contacting the State Department of Labor (local employment service), if you have a social security number.
- Depending on the history of the parents, contacting prisons, and/or state hospitals.
- Contacting all known relatives, friends, and previous employers.
- Checking the telephone directory, county and city directories.
- Contacting utility companies.

- Accessing the State and Federal Parent Locator Service through the Child Support Enforcement Division.
- Accessing the Location Service through contact with your local post office.

7. Proposed Rule:

These items must be sent to the Placement Unit.

1. Birth certificate of child(ren) which includes the parent's names;
2. Attested copies of all court orders concerning the child(ren);
3. Any of Form MDHS-459 series, if applicable;
4. Psychological Evaluation of child(ren), if available;
5. All medical or psychological reports on parents, if available, including necessary medical releases;
6. Any summaries or court reports prepared on child(ren) or his/her family;
7. Copies of written parental Individual Service Plans/Service Agreements, if applicable;
8. A recent color photograph of child(ren);
9. State Department of Health Form 913 (original), **with birth records attached**;
10. If a Form 459 is signed, State Department of Health Forms 914 or 915 (originals) must be included;
11. Additional items (ex. DNA test results, Social Security Cards);
12. Attorney General's Office memorandum.

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Current Rule:

None.

8. Proposed Rule:

The Placement Unit adheres to the following TPR Procedures:

1. All TPR referrals are submitted from the COR to the Placement Unit Director;
2. At the State Office, the TPR referral is given to the TPR Coordinator who will determine need for DACOPP referral before proceeding;
3. The Placement Unit Director and TPR Coordinator review the material in the referral packet for current and correct information before submitting it to the Attorney General's office;
4. The AG's Office signs a form stating that they received the material (**TPR Package**) from the Placement Unit;
5. Additional information may be requested by the AG from the COR Worker, Placement Director or Division Director;

6. The Placement Unit Director provides the Regional Director a copy of the information requested from the AG's Office;
7. The Placement Unit Director logs all out-going and incoming mail concerning TPR;
8. A copy is hand delivered to the AG's Office by the Placement Unit;
9. When information comes from the AG's Office it is logged and sent to the Regional Director to be disbursed to the correct Supervisor;
10. Once the AG's Office drafts an affidavit for the COR Worker to review and make any corrections, the Affidavit is amended and sent to the Placement Unit Director, who logs it and then mails it to the Regional Director;
11. The corrected Affidavit is logged and hand-delivered to the AG's Office by the Placement Unit;
12. The Placement Unit Director reviews petition and signs as Next of Friend with a copy to the Regional Director and Director of Field Operation for the case file and logged;
13. The AG schedules a court date in Chancery Court;
14. The AG's Office provides a docket quarterly to the Placement Unit;
15. The AG's Office provides the Placement Unit Director with a copy of the TPR Judgment, which the Placement Unit Director sends to the Regional Director, and to the TPR Coordinator. This is also logged.

Current Rule:

None.

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## Termination of Parental Rights

### Planning for Termination of Parental Rights

~~Termination of Parental Rights ends, forever all privileges, liberties, and/or power of a mother and/or father to visit, have custody and speak with, write to, or learn about a child or children in the care and custody of the Mississippi Department of Human Services, Division of Family and Children's Services. Termination eliminates lifelong relationships with family members and also extended family.~~

~~Termination of parental rights is the most serious legal action a county office can initiate against the parent/child relationship. Not only does the parent lose all rights to the child, the child loses the parents and all legal ties to other relatives when the parents' rights are terminated.~~

Parents must be informed of the process the agency follows to terminate their parental rights. They must also be informed of their rights to an attorney and referral to supportive counseling. If parents voluntarily surrender their rights, they must be asked whether or not they understand the consequences of the surrender. The agency may accept a voluntary surrender, ~~Regardless of age, sign and execute a written voluntary release to relinquish parental rights to MDHS and terminate the relationship between parent and child~~ regardless of the parent's age (Mississippi Code, Section 93-15-103(2)), unless that parent is *non compis mentis* and/or committed to a psychiatric hospital for the mentally ill or mentally retarded.

Parents have a six-month period of time to work with the County of Responsibility (COR) and complete an adult Individual Service Plan/Service Agreement for the benefit of the child. If the agreement is not satisfactorily completed within six months and there are no compelling reasons to extend the ISP/SA, the agency may initiate a referral for termination of parental rights. The agency shall initiate TPR within the first two months after an unsuccessful adult ISP/SA for children under the age of 3 years.

Mississippi State Law (Section 43-15-13) requires that if the parent is unwilling or unable to care for the child, priority should be given to the relatives for placement of the child. The agency is allowed to waive any rule or regulation to bed or bedroom space for the child if there are appropriate relatives who will take custody of the child.

The Worker shall inform parents of the following factors:

1. The birth parents rights and relationships (as well as all other biological relatives) will be legally and completely severed from the child. The parents and extended family will no longer have legal right to talk to, visit with or have contact with the child or children when parental rights are surrendered.
2. When adopted the child will legally become a part of a new family.
3. A voluntary release of the child signed by the birth parents is generally irrevocable.

#### A. Legal Base

Section 93-15-103 through 93-15-111 (Chapter 15, **Termination of Rights of Unfit Parents**) of the Mississippi Code of 1972, Annotated provides the

procedures and grounds for the termination of parental rights. A Guardian ad Litem (GAL) shall be appointed to protect the interest(s) of the child. Section 43-21-121 (2) states that “the guardian ad litem shall be appointed by the court when custody is ordered or at the first judicial hearing regarding the case, whichever occurs first”.

## **B. Grounds**

The grounds for termination of parental rights are based on one or more of the following seven factors. The **grounds may apply singularly or in combination in any given case.**

1. A parent has deserted without means of identification or abandoned a child as defined in Section 97-5-1;
2. A parent has made no contact with a child under the age of three (3) for six (6) months or a child three (3) years of age or older for a period of one (1) year;
3. A parent has been responsible for a series of abusive incidents concerning one or more children;
4. When the child has been in the care and custody of a licensed child caring agency or the MS Department of Human Services for at least one (1) year, that agency or the MDHS has made diligent efforts to develop and implement a plan for return of the child to its parents, and:
  - a. The parent has failed to exercise reasonable available visitation with the child; or
  - b. The parent, having agreed to a plan to effect placement of the child with the parent, fails to implement the plan so that the child caring agency is unable to return the child to said parent;
5. The parent exhibits ongoing behavior which would make it impossible to return the child to the parent’s care and custody:
  - a. Because the parent has a diagnosable condition unlikely to change within a reasonable time such as alcohol or drug addiction, severe mental deficiencies or mental illness, or extreme physical incapacitation, which condition makes the parent unable to assume minimally, acceptable care of the child; or
  - b. Because the parent fails to eliminate behavior, identified by the child caring agency or the court, which prevents placement of said child with the parent in spite of diligent efforts of the child caring agency to assist the parent;
6. When there is an extreme and deep-seated antipathy by the child toward the parent or when there is some other substantial erosion of the relationship between the parent and child which was caused at least in part by the parent’s



serious neglect, abuse, prolonged and unreasonable absence, unreasonable failure to visit, or communicate, or prolonged imprisonment;

7. When a parent has been **convicted** of any of the following offenses against his natural or adopted child:
  - a. **Rape** of a child under the provisions of Section 97-3-65.
  - b. **Sexual Battery** of a child under the provisions of Section 97-3-95(C).
  - c. **Touching** a child for lustful purposes under the provisions of Section 97-5-23.
  - d. **Exploitation** of a child under the provisions of Section 97-5-31.
  - e. **Felonious Abuse or Battery** of a child under the provisions of Section 97-5-39, or
  - f. **Carnal Knowledge** of a step or adopted child or a child of a co-habituating partner under the provisions of Section 97-5-41.
  - g. **Murder** of another child of such parent, voluntary manslaughter of another child of such parent, aided or abetted, attempted, conspired or solicited to commit such murder or voluntary manslaughter, or a felony assault that results in the serious bodily injury to the surviving child or another child of such parent;
  - h. The child has been **adjudicated** to have been abused or neglected and custody has been transferred from the child's parent(s) for placement pursuant to Section 43-15-13, and a court of competent jurisdiction has determined that reunification shall not be in the child's best interest.

~~*If all efforts to return a child safely to his/her parents, or efforts to place safely with relatives have failed, or if the court finds that the child cannot return home or be placed with relatives, and TPR is clearly in the child's best interest, and legal grounds exist then termination of parental rights, to free the child for adoption, must be initiated.*~~

### C. When to Initiate

The agency is required to file a petition or join any existing petition to terminate parental rights and concurrently identify, recruit, process, and approve a qualified adoptive family:

1. When a child has been in custody for six (6) months and the parents or primary caretakers are not completing the ISP/Service Agreement, pursuant to Section 43-15-13(4) of the Mississippi Code.
2. When a child (of any age) has been in foster care **15 of the most recent 22 months**, regardless of whether the foster care was continuous during those 22 months (Mississippi Code, Section 43-15-13(3)).
3. When a court has determined a child to be an abandoned infant (Section 43-15-201 of the Mississippi Code), termination of parental rights shall be initiated within thirty (30) days.
4. When a parent has been convicted of the following offenses against any child, pursuant to Section 93-15-103 of the Mississippi Code: (i) rape, (ii) sexual

- battery, (iii) touching for lustful purposes, (iv) exploitation, (v) felonious abuse or batter, (vi) carnal knowledge of a step or adopted child or a child of a cohabitating partner, (vii) murder of another child of such parent, voluntary manslaughter of another child of such parent, aided or abetted, attempted, conspired or solicited to commit such murder or voluntary manslaughter, or a felony assault that results in the serious bodily injury to the surviving child or another child of such parent, or (viii) a court of competent jurisdiction has determined that reunification shall not be in the child's best interest.
5. When the court of jurisdiction orders the agency to proceed with TPR.


#### **D. Exceptions and Compelling Reasons not to File TPR**

The agency may choose not to file for TPR if any of the following apply and a court order is obtained:




~~The child is older than 14 years and objects to being adopted.~~

1. The child is being cared for by a relative.
2. The agency has documented compelling and extraordinary reason(s) why TPR would NOT be in the best interest of the child.
3. The agency has not provided such services as it deems necessary for the safe reunification of the family (provided reasonable efforts are required to be made at all, (ASFA Section 101 (a)(B))). Services were not available or accessible.
4. Parents make regular and meaningful visits/contacts with the child, maintain a relationship with the child, and TPR is not in the child's best interest.

#### **F. Worker's Responsibilities**

1. The COR Worker will make diligent searches to locate the parents.
2. The COR Worker will discuss with the Supervisor the documented evidence and circumstances of the case, grounds for TPR, and obtain the Supervisor's approval to pursue TPR.
3. The COR Worker will initiate, through face-to-face contact, a discussion with the parents on voluntary surrender of parental rights, explaining thoroughly what TPR means for them and the child.
4. The COR Worker will inform the parents of the agency's decision to pursue TPR, citing the grounds, documented evidence, and circumstances of the case. This includes the COR Worker informing parent(s) that even if they are visiting with the child(ren) and are in the process of complying with an ISP for the return of the child(ren), the agency is still pursuing TPR and intends to obtain a TPR Judgment.
5. The COR or COS Worker will discuss the plan of adoption with the child, gaining the child's input/reaction to the decision to file a petition to TPR and explaining what the process means for the child.
6. The Worker will document the Adoption Discussion with the child in the Child's ISP under the Initial/Review tab  in MACWIS.



7. The COR Worker will submit a TPR referral  through MACWIS and a TPR packet to the Supervisor who will submit it to the Regional Director. The RD then sends the electronic request and paper request to the Placement Unit at the State Office. The RD approves the TPR request  in MACWIS when the TPR packet is sent to the Placement Unit. The Placement Unit notifies the Attorney General's office that a TPR packet has been sent.
8. The COR Worker is responsible for reviewing the TPR petition for accuracy.
9. The COR Worker will sign the affidavit on diligent searches and return, within seven (7) days to the Attorney General's office.
10. The COR, and upon request the COS Worker, will be knowledgeable of the case being referred for TPR and be prepared to testify in the TPR proceeding.
11. After the hearing, the Worker will document results of the hearing in the child's case  in MACWIS.
12. The Worker will file a copy of the Judgment in the child's paper case and forward to Placement Unit.

#### **F. Diligent Searches**

Section 43-15-13(3) of the Mississippi Code states the agency "shall make all possible contact with the child's natural parent(s) and any interested relative for the first two (2) months following the child's entry into the foster care system." Possible sources for diligent searches include, but are not limited to:

1. Sending correspondence to all previous addresses;
2. Calling all previous telephone numbers posted in case file;
3. Sending letters to General Delivery in a town or city where the Worker believes the parent to be residing but has no specific address;
4. Contacting motor vehicle registration;
5. Requesting a record check from local law enforcement;
6. Writing the State Department of Labor (local Employment Office), if Worker has a social security number;
7. Contacting prisons and/or state hospitals;
8. Contacting all known relatives, friends and previous employers;
9. Checking the telephone directory, county, and city directories;
10. Contacting utility and telephone companies;
11. Accessing the state and Federal Parent Locator Service through the Child Support Enforcement Office;
12. Accessing the Location Services through contact with the local post office;
13. Making a historical check through MACWIS;
14. Utilizing Internet services.

The Worker should document all efforts to locate the **biological father** whose identity is unknown or whose identity is known but whose address is unknown.

~~The Social Worker should document all efforts to locate the biological father whose identity is unknown or whose identity is known but his whereabouts is unknown. Diligent search should be made when the child comes into custody, when the case is~~



transferred to the foster care unit, and when TPR is filed or surrender of parental rights is accepted.

#### Referral Procedures

1. Birth certificate of child.
2. Attested copies of all court orders concerning the child.
3. Any of Form MDHS-459 series if applicable.
4. Medical or psychological reports on parents.
5. A color photograph of the child.

These items must be sent to the Placement Unit.

The following components completed in MACWIS will be reviewed by the Placement Unit as part of the TPR referral:

1. Summary of Health Information;
2. Summary of Psychological and Educational Information;
3. Social Summaries and Court Reports;
4. Individual Service Plans
5. Visitation Plans and any other pertinent documents in MACWIS.

The county may submit additional information it considers pertinent in terminating the parent's rights, such as paternity tests, alcohol or drug screening results, any commitment papers/forms on the parents, and any SSI payee's name and address.

*The Grounds for termination of parental rights must be documented and/or the agency's efforts to rehabilitate the parent and/or reunite the family must be documented.*

*MACWIS will generate the TPR referral. Refer to the appropriate MACWIS screen.*

To prevent delays in processing the information, the county should submit a complete referral made up of all the items listed above. Upon receipt, the State Office staff date stamps and logs the information, makes the appropriate number of copies, sets up a case record, reviews the information and prepares a Data Sheet for DACOPP members.

#### Evaluation of TPR Referrals

Assessment of a TPR referral is conducted by the Director's Advisory Committee on Permanency Planning (DACOPP). After the DACOPP review, the referral is forwarded to the **Attorney General's Office** or a memo is sent to the county with a request for additional information or a recommendation to take other action. The Regional Director and county staff are notified regardless of the decision or action taken on the referral.

#### Attorney General's Office

The Special Assistant Attorney General will draft the petition and send it to the social worker and ASWS in the County office to review make any corrections or additions needed. The social worker should carefully review the petition for accuracy before

~~routing it to the Regional Director for signature. The County should notify the Attorney General's Office of any changes in the case, or with the family. This is extremely important, because some changes can and will affect the legality of the case or invalidate the referral. Any questions or concerns should be discussed with the Special Assistant Attorney General handling the case or assigned to the Region.~~

~~If the petition is correct it should be forwarded immediately to the Regional Director for signature. Within fourteen working days of the county's receipt of the petition, the petition must be routed through the Regional Director's office to be signed and be returned to the Attorney General's office. The Attorney handling the case will notify the county of the date of the hearing and will help prepare staff for the court appearance~~

#### **G. TPR Packet Checklist**

These items must be sent to the Placement Unit.

1. Birth certificate of child(ren) which includes the parent's names;
2. Attested copies of all court orders concerning the child(ren);
3. Any of Form MDHS-459 series, if applicable;
4. Psychological Evaluation of child(ren), if available;
5. All medical or psychological reports on parents, if available, including necessary medical releases;
6. Any summaries or court reports prepared on child(ren) or his/her family;
7. Copies of written parental Individual Service Plans/Service Agreements, if applicable;
8. A recent color photograph of child(ren);
9. State Department of Health Form 913 (original), **with birth records attached;**
10. If a Form 459 is signed, State Department of Health Forms 914 or 915 (originals) must be included;
11. Additional items (ex. DNA test results, Social Security Cards);
12. Attorney General's Office memorandum.

To prevent delays in processing the information, the county should submit a **complete referral** including all of the items listed above. Upon receipt, a Placement Unit Worker date stamps and logs the information, makes the appropriate number of copies, sets up a case record, reviews the information and prepares a Data Sheet for DACOPP members, if applicable.

#### **H. Health Department Form 913**

The worker will obtain information for the Health Department form MSDH-913 and other case documentation. This information is used to:

1. Assess the child's physical and personality characteristics, current development, and special needs;
2. Determine whether the child's basic needs can best be met in an adoptive placement;
3. Help in the selection of a family for the child;



4. Provide information to prospective adoptive parents to assist in making a decision about the adoption of the child;
5. Provide information about the child and birth parents at the appropriate time;
6. Satisfy the child's need to know about the birth parents at the appropriate time.

## **I. Types of TPR Referrals**

### **1. Court Ordered**

A referral can be made in which a court has mandated the county office to file a petition or take the necessary action needed to terminate parental rights. This request must be acted on within thirty (30) days if possible since the county office can be penalized for non compliance. These cases are not reviewed by DACOPP because the court order takes precedence over any DACOPP decision. However, DACOPP is made aware of these referrals by the Placement Unit.

Some judges order the county office to bypass the state office and submit court ordered TPR referrals directly to the Attorney General's Office. This is acceptable because the county office must comply with the court order. At the same time, **the COR must submit a complete TPR referral to the Placement Unit at the State Office to prevent delays in processing.**

### **2. Voluntary Surrender of Parental Rights**

This type of referral occurs when all legal, biological and putative parents have signed the form **MDHS-SS-459 Voluntary Surrender of Parental Rights**. This type of referral is permanent and irrevocable except for showings of fraud and/or financial gain, duress or undue influence. With the Voluntary Surrender, the Worker shall also have the parent choose which Health Department form to sign, 914 or 915, depending on whether or not the parent wants information about them given to the child when the child reaches adulthood.

If only one parent releases his/her parental rights, the TPR referral will be reviewed by DACOPP to determine if sufficient grounds exist to terminate the parental rights on the other parent. If both parents have signed the MDHS-SS-459, in the presence of a notary public, the referral will not be reviewed by DACOPP but the Placement Unit will obtain a legal clearance. If the parents were not married and if there is not a court order establishing paternity in the man claimed, or who the mother claimed to be the father, a TPR hearing must be held for an Unknown Putative Father before any legal clearances may be obtained.

**~~Surrenders in which all parents have signed the MDHS-SS-459 should be sent directly to the Placement Permanency Planning Unit. Each parent must sign three (3) original copies of this form if the mother and/or father wants to surrender parental rights.~~**



~~The Social Worker should help the parents to explore options, and help them understand the consequence of relinquishing their legal rights and responsibilities to a child. It may be awkward for parents to admit their inability to care for their own children and discouraging to lose contact with their children.~~

The Voluntary Surrender should not be made available to parents who are *non compis mentis* and/or committed to a psychiatric hospital for the mentally ill or mentally retarded.

A parent may sign one or more of the following MDHS forms:

- a. MDHS-SS-459 Surrender Parental Rights and Consent to Adoption form cannot be executed by the birth parents until 72 hours after the birth of a child. **Each parent must sign six originals** of this form in the presence of the Worker and a notary public. Each parent is given an original, one original is filed in the case record and four originals are forwarded to the Placement Unit along with a complete TPR referral. Original 459's for each child of each parent must be included in the TPR packet.
- b. MDHS-SS-459A Mother's Statement Naming the Father of Child is signed by the unmarried or married mother whose husband is not the biological father of the child. There must be **six originals** of this form signed in the presence of the Worker and a notary public. One original is given to the mother, one is filed in the case record and four originals are forwarded to the Placement Unit along with a complete TPR referral. If the father has not established any rights, the Worker shall give him information about how he can file to establish paternity.
- c. MDHS-SS-459B Mother's Statement about Unknown Father of Child is signed when the mother cannot identify the biological father. **Six originals** must be signed in the presence of the Worker and notary public. One is given to the mother, one is filed in the case record and four originals are sent to the Placement Unit along with a complete TPR referral.

### **3. Regular Referrals**

This referral is prepared after the COR has exhausted all reasonable and diligent efforts to reunite the child with his/her family or place the child with relatives and those options have failed. The COR has documented efforts to locate parents, if appropriate. The COR has identified legal grounds on which to terminate parental rights. If the above actions have taken place, then the COR prepares and submits a TPR referral with all required items to the Placement Unit. The referral will be reviewed by DACOPP to determine if sufficient grounds exist to terminate the parental rights. **This type of referral is not court ordered nor have the parents surrendered their rights.**

~~The petition may be filed in the county of responsibility, the county of service, or the county in which the defendant parents reside. The petition can be open for trial 30 days after process is served on the defendants or 30 days after the first newspaper publication for defendants whose addresses are unknown.~~

### *Guardian Ad Litem*

A Guardian Ad Litem shall be appointed to protect the interest of the child in the termination of parental rights.

### *Parents*

The parents will have a six-month period of time in which to meet the Service Agreement with the Department for the benefit of the child. If the agreement has not been satisfied within six months, the Department will initiate parental rights termination action within six months following the six-month time limitation of the Services Agreement.

### *Relatives*

The law provides that first priority be given to relative placement and MDHS is allowed to waive any rule or regulation that requires a separate bed or bedroom for the child.

### *Children*

For children under the age of 3, TPR will be initiated within two months after the six-month Service Agreement period if the agreement is not satisfied.

### *County Offices*

To be in compliance with Section 43-15-13 of the Mississippi Code of 1972, Annotated, and county offices must assure that **social workers** are:

1. Conducting diligent searches for both **birth parents and relatives** during the **first two months** of the child's entry into the foster care system.
2. Documenting in the case record, the method(s) being used to conduct the diligent searches.
3. Developing and implementing the ISP/Service Agreement with the parents **within two months** of the child coming into foster care.
4. Informing parents they have **6 months** to successfully complete the Individual Service Plan (ISP) for parents.
5. Filing the child and parent's ISP with the court every **6 months** and to either terminate parental rights or request that the court extend the time period.
6. Alerting Foster Care Reviewers through MACWIS that a child has entered foster care. Refer to the appropriate screen.

### **Documentation in TPR Cases**

Termination hearings and other court hearings require that clear and convincing evidence be presented. Thorough documentation is required from the first day of the case and throughout the duration of the case. Therefore it is pertinent that the county social worker document:

1. When parent/child visits are scheduled, whether or not the visits occur, why they didn't occur.



2. All referrals to other agencies, the acceptance or non-acceptance of the parent for services, the reasons for non-acceptance.
3. Contacts scheduled with the parents, number of contacts held, number of contacts not held, and the reasons not held.
4. All services offered (indicate the ones the parent accepted and refused).
5. All efforts made to fulfill the ISP\Service Agreement for parents.
6. Major issues discussed and decisions reached.
7. Efforts to identify and assess whether there are any relatives suitable for placement of the child.
8. The quantity and quality of interaction between the parent and child during visits, the degree of understanding and acceptance shown by the parent toward the child, the child's reaction to the parent.
9. The foster parent's description of the child's reaction upon returning to the foster home after parent\child visits.
10. Names and addresses of agencies whose staff may be able to testify about recorded events.
11. Factual, nonjudgmental information.
12. The parent's progress or lack of progress in relation to the ISP\Service Agreement.

#### Goals of Directors Advisory Committee

1. To be a useful tool in helping to establish and expedite permanency for children in custody.
2. To ensure that children do not remain unnecessarily in foster care placements.
3. To provide technical assistance, advice, and support to Regional and County staff in the difficult task of terminating parental rights.
4. To assist counties with uncertainty about TPR laws and Grounds in particular cases.
5. To serve as a forum for discussing difficult cases.
6. To serve as a liaison between the County and Attorney General's Office staff.
7. To help reduce delays in the processing of TPR referrals.

#### 4. Special Referrals

These referrals are special because three circumstances apply:

- a. A child is in custody and;
- b. Both parents are deceased and;
- c. Relatives are not available as placement resources.



Along with a regular TPR referral, the COR must submit the death certificates for the parents. This is a special situation because both parents are deceased and there are no rights to terminate. If circumstances dictate, however, a TPR referral must still be made to TPR an Unknown Putative Father. These referrals are rare but do occur.

#### **J. Rights of Parents in the TPR Process**

Prior to the entry of a Judgment Terminating Parental Rights the parent has a right to:

1. Receive notice of a hearing on a petition for termination of parental rights;
2. Appear and contest the petition;
3. Sign and execute a written voluntary release to relinquish parental rights to MDHS, regardless of the parent's age;
4. Continue visits with child until TPR is finalized or until court has restricted or discontinued visits due to other factors;
5. Obtain legal counsel prior to the date for which the TPR hearing is set.

#### **K. Evaluation of TPR Referrals**

Assessment of a TPR referral is conducted by the Permanency Planning Coordinator. Referrals that are not court ordered are reviewed by the Director's Advisory Committee on Permanency Planning (**DACOPP**). If DACOPP requires additional information, a request is submitted to the COR. When the review is completed, DACOPP then forwards the review sheet and letter to the RD and COR.

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The Placement Unit adheres to the following TPR Procedures:

1. All TPR referrals are submitted from the COR to the Placement Unit Director;
2. At the State Office, the TPR referral is given to the TPR Coordinator who will determine need for DACOPP referral before proceeding;
3. The Placement Unit Director and TPR Coordinator review the material in the referral packet for current and correct information before submitting it to the Attorney General's office;
4. The AG's Office signs a form stating that they received the material (**TPR Package**) from the Placement Unit;
5. Additional information may be requested by the AG from the COR Worker, Placement Director or Division Director;
6. The Placement Unit Director provides the Regional Director a copy of the information requested from the AG's Office;
7. The Placement Unit Director logs all out-going and in-coming mail concerning TPR;
8. A copy is hand delivered to the AG's Office by the Placement Unit;
9. When information comes from the AG's Office it is logged and sent to the Regional Director to be disbursed to the correct Supervisor;

10. Once the AG's Office drafts an affidavit for the COR Worker to review and make any corrections, the Affidavit is amended and sent to the Placement Unit Director, who logs it and then mails it to the Regional Director;
11. The corrected Affidavit is logged and hand-delivered to the AG's Office by the Placement Unit;
12. The Placement Unit Director reviews petition and signs as Next of Friend with a copy to the Regional Director and Director of Field Operation for the case file and logged;
13. The AG schedules a court date in Chancery Court;
14. The AG's Office provides a docket quarterly to the Placement Unit;
15. The AG's Office provides the Placement Unit Director with a copy of the TPR Judgment, which the Placement Unit Director sends to the Regional Director, and to the TPR Coordinator. This is also logged.

#### **L. Attorney General's Office**

A Special Assistant Attorney General will draft the petition and send it to the COR Worker and Supervisor to review make any corrections or additions needed. The Worker should carefully review the petition for accuracy, making sure all the appropriate grounds are included, before routing it to the Placement Director for signature. The COR **must** notify the Attorney General's Office of any changes in the case, or with the family. Any questions or concerns **must** be discussed with the Special Assistant Attorney General handling the case or assigned to the Region.

If the petition is correct it should be forwarded immediately to the Placement Director for signature. Within fourteen working days of the COR's receipt of the petition, it must be signed by the Regional Director and returned to the Attorney General's office. The attorney handling the case will notify the county of the date of the hearing and will help prepare staff for the court appearance. The petition may be presented to the court for adjudication at any time after the expiration of thirty (30) days after process has been received by the respondent(s).

~~The petition may be filed in the county of responsibility, the county of service, or the county in which the defendant parents reside. The petition can be open for trial 30 days after process is served on the defendants or 30 days after the first newspaper publication for defendants whose addresses are unknown.~~

#### *Guardian-Ad-Litem*

~~A Guardian-Ad-Litem shall be appointed to protect the interest of the child in the termination of parental rights.~~

#### *Parents*

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